

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

GILBERT ROSALES

Plaintiff,

vs.

**COCA-COLA SOUTHWEST
BEVERAGES LLC**

Defendant.

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Civil Action No. 3:18-cv-361

DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Coca-Cola Southwest Beverages LLC (“CCSWB” or “Defendant”) hereby gives notice that it is removing this civil action to the United States District Court for the Western District of Texas, El Paso Division. In support of this Notice of Removal, Defendant respectfully shows the Court the following:

I.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. On October 8, 2018, Plaintiff Gilbert Rosales (“Plaintiff”) filed his Original Petition with Jury Demand and Request for Disclosure (the “Original Petition”) in the District Court for El Paso County, Texas, styled *Gilbert Rosales v. Coca-Cola Southwest Beverages LLC*, Case No. 2018DCV3743 (the “State Court Action”). Defendant was served with the Original Petition on October 25, 2018 by mail. True and correct copies of all process, pleadings, and orders served on Defendant in the State Court Action and a copy of the state court docket sheet are contained in the Appendix in Support of Defendant’s Notice of Removal (“APP.”), filed concurrently herewith, and incorporated herein by reference for all purposes. See APP.

0000001- - APP. 0000021.

2. Plaintiff's Original Petition asserts claims for age and disability discrimination, as well as retaliation in violation of Texas Labor Code Chapter 21, the Americans with Disabilities Act, and the Americans with Disabilities Act Amendment Act of 2008, 42 U.S.C. ch. 126 § 12101 *et seq.*. See APP 0000006.

II.

REQUIREMENTS FOR REMOVAL

3. This Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), because it is being filed within thirty days after service on Defendant of Plaintiff's Petition. See 28 U.S.C. § 1446(b).

4. Removal to this federal district and division is proper pursuant to 28 U.S.C. § 124(c)(1) because it embraces El Paso County, Texas, the place in which the State Court Action was pending.

5. Defendant is the only defendant sued and served with Plaintiff's Petition. Therefore, no other consent to remove is required.

6. Defendant will give prompt written notice of the filing of this Notice of Removal to all adverse parties and will file a copy of it with the District Clerk of El Paso County, Texas.

III.

BASIS FOR FEDERAL JURISDICTION

7. This Court has original jurisdiction over this action because there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs. See 28 U.S.C. § 1332. This Court also has original jurisdiction of this action because it involves claims brought under the laws of the United States. See 28 U.S.C. § 1331.

A. There is Complete Diversity of Citizenship Between the Parties.

8. Plaintiff is a resident of El Paso County, Texas. *See* APP. 0000002.

9. Defendant is a limited liability company organized and existing under the laws of the state of Delaware with its principal place of business in Dallas, Texas. The sole member of CCSWB is AC Bebidas, S. de R.L. de C.V., which is a Mexican business company with its principal place of business in Monterrey, Nuevo León, Mexico. The members of AC Bebidas, S. de R.L. de C.V. are: (a) Arca Continental, S.A.B. de C.V. (a Mexican business corporation with its principal place of business in Monterrey, Nuevo León, Mexico); (b) Coca-Cola Refreshments USA, Inc. (a Delaware corporation with its principal place of business Atlanta, Georgia); and (c) Desarrolladora Arca Continental, S. de R.L. de C.V. (“Desarrolladora”), a Mexican business company with its principal place of business in Monterrey, Nuevo León, Mexico. Desarrolladora’s members are (a) Arca Continental, S.A.B. de C.V. (a Mexican business corporation) and (b) AC Alimentos y Botanas, S.A. de C.V. (a Mexican business corporation), both of which have their principal places of business in Monterrey, Nuevo León, Mexico. Therefore, Defendant is a citizen of the States of Delaware and Georgia and a citizen of the foreign state of Mexico.

B. The Amount in Controversy Exceeds the Jurisdictional Threshold.

10. Plaintiff’s Original Petition meets the amount in controversy requirement for diversity jurisdiction pursuant to 28 U.S.C. § 1332(b) of \$75,000. Plaintiff’s Original Petition seeks monetary relief over \$200,000 but not more than \$1,000,000. *See* APP. 0000007. Because Plaintiff’s Original Petition affirmatively reveals on its face that Plaintiff seeks damages in excess of the minimum jurisdictional amounts of the federal court, this Court has diversity jurisdiction. *See e.g., Bosky v. Kroger Texas LP*, 288 F.3d 208, 210 (5th Cir. 2002).

C. The law suit involves a federal question.

11. This action arises under federal statutes: the Americans with Disabilities Act and the Americans with Disabilities Act Amendment Act of 2008, 42 U.S.C. ch. 126 § 12101 *et seq.*. See APP. 00000006. This Court has subject matter jurisdiction over this action based on the existence of a federal question because Plaintiff seeks to recover damages under the laws of the United States. 28 U.S.C. § 1331. It plainly appears from the face of Plaintiff's Original Petition that Plaintiff has asserted violations under federal law and removal is appropriate.

**IV.
CONCLUSION AND PRAYER FOR RELIEF**

Defendant respectfully requests that this Court assume jurisdiction over this action and proceed with its handling as if it had been filed in the United States District Court for the Western District of Texas, El Paso Division.

Dated this 20th day of November, 2018. Respectfully submitted,

/s/ Sean M. McCrory

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was delivered via email through CM/ECF Filer to the following counsel on this 20th day of November, 2018:

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/s/ Sean M. McCrory

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